

RUS Water and Waste Disposal Facility Loans and Grants Program; RHS Housing and Community Facilities Loan Programs; RBS Loan, Grant, and Guarantee Programs and the Intermediary Relending Program; and determinations of the Rural Housing Trust 1987-1 Master Servicer.

(c) This subpart does not apply to decisions made by parties outside an agency even when those decisions are used as a basis for decisions falling within paragraph (b) of this section, for example: decisions by state governmental construction standards-setting agencies (which may determine whether RHS will finance certain houses); Davis-Bacon wage rates; flood plain determinations; archaeological and historical areas preservation requirements; and designations of areas inhabited by endangered species.

§ 1900.54 Effect on assistance pending appeal.

(a) Assistance will not be discontinued pending the outcome of an appeal of a complete or partial adverse decision.

(b) Notwithstanding the provisions of paragraph (a) of this section, administrative offsets initiated under subpart C of part 1951 will not be stayed pending the outcome of an appeal and any further review of the decision to initiate the offset.

§ 1900.55 Adverse action procedures.

(a) If an applicant, guaranteed lender, a holder, borrower or grantee is adversely affected by a decision covered by this subpart, the decision maker will inform the participant of the adverse decision and whether the adverse decision is appealable. A participant has the right to request the Director of NAD to review the agency's finding of nonappealability in accordance with 7 CFR 11.6(a). In cases where the adverse decision is based on both appealable and nonappealable actions, the adverse action is not appealable.

(b) A participant affected by an adverse decision of an agency is entitled under section 275 of the Act to an opportunity for a separate informal meeting with the agency before commencing an appeal to NAD under 7 CFR part 11.

(c) Participants also have the right under section 275 of the Act to seek mediation involving any adverse decision appealable under this subpart if the mediation program of the State in which the participant's farming operation giving rise to the decision is located has been certified by the Secretary for the program involved in the decision. An agency shall cooperate in such mediation. Any time limitation for appeal will be stayed pending completion of the mediation process (7 CFR 11.5(c)).

§ 1900.56 Non-appealable decisions.

The following are examples of decisions which are not appealable:

(a) Decisions which do not fall within the scope of this subpart as set out in § 1900.53.

(b) Decisions that do not meet the definition of an "adverse decision" under 7 CFR part 11.

(c) Decisions involving parties who do not meet the definition of "participant" under 7 CFR part 11.

(d) Decisions with subject matters not covered by 7 CFR part 11.

(e) Interest rates as set forth in agency procedures, except for appeals alleging application of an incorrect interest rate.

(f) The State RECD Director's refusal to request an administrative waiver provided for in agency program regulations.

(g) Denials of assistance due to lack of funds or authority to guarantee.

§ 1900.57 [Reserved]

EXHIBIT A TO SUBPART B [RESERVED]

EXHIBIT B-1 TO SUBPART B—LETTER FOR NOTIFYING APPLICANTS, LENDER, HOLDERS AND BORROWERS OF ADVERSE DECISIONS WHERE THE DECISION IS APPEALABLE

UNITED STATES DEPARTMENT OF AGRICULTURE

Farmers Home Administration or its successor agency under Public Law 103-354

(Insert Address)

Date _____

Dear _____:

Pt. 1900, Subpt. B, Exh. B-2

7 CFR Ch. XVIII (1-1-99 Edition)

After careful consideration, we [were unable to take favorable action on your application/request for Farmers Home Administration or its successor agency under Public Law 103-354 services] [are cancelling/reducing the assistance you are presently receiving]. The specific reasons for our decision are:

(Insert here the adverse decision and all of the specific reasons for the adverse action.)

If you have any questions concerning the decision or the facts used in making our decision and desire further explanation, you may call or write the County Office (insert phone number) to request a meeting with (this office) (The County Committee) within 15 calendar days of the date of this letter. You should present any new information or evidence along with possible alternatives for our consideration. You may also bring a representative [or legal counsel] with you. You also have the right to appeal this decision to a hearing officer in lieu of, or in addition to, a meeting with [this office] [the County Committee]. See attachment for your appeal rights. (Attach Form FmHA or its successor agency under Public Law 103-354 1900-1.) (For guaranteed loans, except loss claims, the applicant and lender must jointly request a meeting and/or an appeal.)

If you do not wish a meeting, as outlined above, a request for a hearing must be sent to the Area Supervisor, National Appeals Staff (address) _____, postmarked no later than (month) _____, (date) _____.

(insert date 30 days from date of letter.)

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal Agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

(Decision Maker)

(County Supervisor may sign for County Committee)

(Title)

[55 FR 9874, Mar. 16, 1990]

EXHIBIT B-2 TO SUBPART B—LETTER FOR NOTIFYING APPLICANTS, LENDERS AND HOLDERS AND BORROWERS OF UNFAVORABLE DECISION REACHED AT THE MEETING

UNITED STATES DEPARTMENT OF AGRICULTURE

Farmers Home Administration or its successor agency under Public Law 103-354

(Insert Address)

Date

Dear _____:

We appreciated the opportunity to review the facts relative to [your application/request for FmHA or its successor agency under Public Law 103-354 services] [the assistance you are presently receiving]. We regret that our meeting with you did not result in a satisfactory conclusion.

(Insert here the adverse decision and all the specific reasons for the adverse action.)

See attachment for your appeal rights. (Attach Form FmHA or its successor agency under Public Law 103-354 1900-1) (For guaranteed loans, except loss claims, the applicant and lender must jointly request an appeal.)

A request for a hearing must be sent to the Area Supervisor, National Appeals Staff _____, postmarked no later than (month) _____, (date) _____ (insert date 30 days from date of letter.)

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal Agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

(Decision Maker)

(County Supervisor may sign for County Committee)

(Title)

[55 FR 9874, Mar. 16, 1990]

RHS, RBS, RUS, FSA, USDA

Pt. 1900, Subpt. B, Exh. B-4

EXHIBIT B-3 TO SUBPART B—LETTER FOR NOTIFYING APPLICANTS, LENDER, HOLDERS AND BORROWERS OF ADVERSE DECISIONS WHERE THE DECISION INVOLVES AN APPRAISAL (NOT TO BE USED IN CASES INVOLVING FARMER PROGRAM PRIMARY LOAN SERVICING ACTIONS)

UNITED STATES DEPARTMENT OF AGRICULTURE

Farmers Home Administration or its successor agency under Public Law 103-354

(Insert Address)

Date _____

Dear _____:

After careful consideration, we [were unable to take favorable action on your application/request for Farmers Home Administration or its successor agency under Public Law 103-354 services] [are cancelling/reducing the assistance you are presently receiving]. The specific reasons for our decision are:

(Insert here the adverse decision and all of the specific reasons for the adverse action.)

If you have any questions concerning the decision or the facts used in making our decision and desire further explanation, you may call or write the County Office (insert phone number) to request a meeting with (this office) (The County Committee) within 15 calendar days of the date of this letter. You should present any new information or evidence along with possible alternatives for our consideration. You may also bring a representative or legal counsel with you.

If you do not wish to have a meeting as outlined above, you may contest the appraisal of the property value. In order to contest the appraisal you must first request review of the appraisal by the FmHA or its successor agency under Public Law 103-354 State Director. Your request for review by the State Director should be made through our office. You will be advised of the results of the State Director's review. If after the State Director's review you still disagree with the appraisal you may request a hearing. When you receive the results of the State Director's review you will be advised on how to ask for a hearing. Your request for review of the appraisal must be postmarked no later than (month)_____, (date)_____ (insert date 15 days from date of letter).

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex,

marital status, handicap, or age (provided that the applicant has the capacity to enter [55 FR 9874, Mar. 16, 1990]

EXHIBIT B-4 TO SUBPART B—LETTER FOR NOTIFYING APPLICANTS, LENDERS AND HOLDERS AND BORROWERS OF UNFAVORABLE DECISION REACHED AFTER STATE DIRECTOR REVIEW OF AN APPRAISAL (NOT TO BE USED IN CASES INVOLVING FARMER PROGRAM PRIMARY LOAN SERVICING ACTIONS)

UNITED STATES DEPARTMENT OF AGRICULTURE

Farmers Home Administration or its successor agency under Public Law 103-354

(Insert Address)

Date _____

Dear _____:

At your request we have reviewed the appraisal of the property you wish to purchase. We have determined that the value estimate of the property is both supportable and defensible (as required by FmHA or its successor agency under Public Law 103-354 regulations and appraisal industry standards) and therefore acceptable.

You have the right to appeal this decision. You must show why the appraisal is in error. You may submit an independent appraisal, at your expense, from a qualified appraiser who is a designated member of [the American Institute of Real Estate Appraisers, Society of Real Estate Appraisers, American Society of Farm Managers and Rural Appraisers, etc.,] or an equivalent organization requiring appraisal education, testing and experience. The appraisal must conform to Agency Appraisal regulations applicable to the loan program.

See attachment for your appeal rights.

A request for a hearing must be sent to the Area Supervisor, National Appeals Staff (address) _____, postmarked no later than (month) _____, (date) _____, (insert date 30 days from date of letter)

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal Agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

(State Director)

[55 FR 9875, Mar 16, 1990]

EXHIBIT C TO SUBPART B—LETTER FOR NOTIFYING APPLICANTS, LENDERS, HOLDERS, AND BORROWERS OF ADVERSE DECISIONS WHEN PART OR ALL OF THE DECISION IS NOT APPEALABLE [NOT USED IN CONNECTION WITH DECISIONS RELATED TO NON-PROGRAM APPLICANTS, BORROWERS, OR PROPERTY]

UNITED STATES DEPARTMENT OF AGRICULTURE

Farmers Home Administration or its successor agency under Public Law 103-354

(Insert Address)

(Date)

Dear _____:

After careful consideration we [were unable to take favorable action on your application/request for Farmers Home Administration or its successor agency under Public Law 103-354 services] [are cancelling/reducing the assistance you are presently receiving].

(Insert and number all of the *specific* reasons for the adverse action. Examples of nonappealable reasons are listed in § 1900.55(a)).

If you have any questions about this action, we would like the opportunity to explain in detail why your request has not been approved, explain any possible alternative, or provide any other information you would like. You may bring any additional information you may have and you may bring a representative or counsel if you wish. Please call (*telephone number*) for an appointment.

Applicants and borrowers generally have a right to appeal adverse decisions, but FmHA

or its successor agency under Public Law 103-354 decisions based on certain reasons are not appealable. We have determined that the reason(s) numbered _____ for the decision in this case make(s) the decision not appealable under FmHA or its successor agency under Public Law 103-354 regulations. You may, however, write the Area Supervisor, National Appeals Staff (insert address) for a review of the accuracy of our finding that the decision is not appealable, postmarked no later than (month) _____, (date) _____ (insert date 30 days from date of letter).

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal Agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

(Decision Maker)

(County Supervisor may sign for County Committee)

(Title)

[55 FR 9875, Mar. 16, 1990, as amended at 58 FR 52646, Oct. 12, 1993]

EDITORIAL NOTE: At 58 FR 52646, Oct. 12, 1993, the Farmers Home Administration attempted to amend exhibit C of subpart B of part 1900 by removing in the second paragraph the words “(month) _____”; however, because “(month) _____” does not exist in the second paragraph, this amendment could not be incorporated.

EXHIBIT D TO SUBPART B—HEARINGS/REVIEW OFFICER DESIGNATIONS

HEARING/REVIEW OFFICER DESIGNATIONS

Decisionmaker or decision	Hearing officer	Review officer
County Supervisor	National Appeals Staff Hearing Officer	State Director and/or Director, National Appeals Staff.
County Committee	National Appeals Staff Hearing Officer	State Director and/or Director, National Appeals Staff.
*District Director, *State Program Chief, *District Specialist.	National Appeals Staff Hearing Officer	**State Director and/or Director, National Appeals Staff.
*State Director, *Regional Director	As appointed by Director, National Appeals Staff.	Director, National Appeals Staff.
Division Director or Assistant Administrator.	As appointed by Director, National Appeals Staff.	Director, National Appeals Staff.
Assistant Administrator	As appointed by Director, National Appeals Staff.	Director, National Appeals Staff.

HEARING/REVIEW OFFICER DESIGNATIONS—Continued

Decisionmaker or decision	Hearing officer	Review officer
Deputy or Associate Administrator	As appointed by Director, National Appeals Staff.	Director, National Appeals Staff.

*Decisionmaker for Rural Development Administration or its successor agency under Public Law 103-354 (RDA or its successor agency under Public Law 103-354) cases for Regional Office Operations.

**Review officer will be the Regional Director and/or the Director, National Appeals Staff for RDA or its successor agency under Public Law 103-354 cases.

NOTES

1. District Director also means Assistant District Director or District Loan Specialist.

2. County Supervisor also means Assistant County Supervisor with loan approval authority.

3. The Director of the National Appeals Staff may designate a staff member to conduct a hearing or review. When the hearing/review is completed, the designee will send the complete case file, hearing notes, tape recordings, and a recommended decision to the Director for a final decision. The Director may, for individual cases, delegate final decision authority to a designee.

4. For decisions not directly covered above, advice should be sought from the Director of the National Appeals Staff.

5. An appellant may elect to have an appeal reviewed by the State Director, or the Director of the National Appeals Staff. The decision of the State Director will be subject to further review by the Director of the National Appeals Staff upon request of the appellant.

[58 FR 4065, Jan. 13, 1993]

Subpart C—Applicability of Federal Law

§ 1900.101 General.

This subpart provides Agency policy concerning:

(a) The applicability of Federal rather than State Law in the conduct of Farmers Home Administration (FmHA) or its successor agency under Public Law 103-354 operations, and

(b) The liability of an auctioneer for conversion of personal property mort-

gaged to FmHA or its successor agency under Public Law 103-354.

[44 FR 10979, Feb. 26, 1979, as amended at 45 FR 8934, Feb. 11, 1980]

§ 1900.102 Applicable law.

Loans made by FmHA or its successor agency under Public Law 103-354 are authorized and executed pursuant to Federal programs adopted by Congress to achieve national purposes of the U.S. Government.

(a) Instruments evidencing or securing a loan payable to or held by the Farmers Home Administration or its successor agency under Public Law 103-354, such as promissory notes, bonds, guaranty agreements, mortgages, deeds of trust, financing statements, security agreements, and other evidences of debt or security shall be construed and enforced in accordance with applicable Federal law.

(b) Instruments evidencing a guarantee, conditional commitment to guarantee, or a grant, such as contracts of guarantee, grant agreements or other evidences of an obligation to guarantee or make a grant, executed by the Farmers Home Administration or its successor agency under Public Law 103-354, shall be construed and enforced in accordance with applicable Federal law.

(c) In order to implement and facilitate these Federal loan programs, the application of local procedures, especially for recordation and notification purposes, may be utilized to the fullest extent feasible and practicable. However, the use of local procedures shall not be deemed or construed to be any waiver by FmHA or its successor agency under Public Law 103-354 of Federal immunity from any local control, penalty, or liability, or to subject FmHA or its successor agency under Public Law 103-354 to any State required acts or actions subsequent to the delivery